

JOURNAL OF THE SENATE

EIGHTY-SEVENTH SESSION

FIFTH DAY

STATE OF SOUTH DAKOTA
Senate Chamber, Pierre
Thursday, January 19, 2012

The Senate convened at 2:00 p.m., pursuant to adjournment, the President presiding.

The prayer was offered by the Chaplain, Rev. Brad Urbach, followed by the Pledge of Allegiance led by Senate pages Tucker Troyer and Kimberly Welter.

Roll Call: All members present except Sens. Cutler and Rave who were excused.

APPROVAL OF THE JOURNAL

MR. PRESIDENT:

The Committee on Legislative Procedure respectfully reports that the Secretary of the Senate has had under consideration the Senate Journal of the fourth day.

All errors, typographical or otherwise, are duly marked in the temporary journal for correction.

And we hereby move the adoption of the report.

Respectfully submitted,
Bob Gray, Chair

Which motion prevailed.

REPORTS OF STANDING COMMITTEES

MR. PRESIDENT:

The Committee on Judiciary respectfully reports that it has had under consideration SB 42 and returns the same with the recommendation that said bill be amended as follows:

42rc

On page 2, line 4, of the printed bill, delete "one-year" and insert "two-year".

42rb

On page 2, line 4, of the printed bill, delete "by a".

On page 2, delete line 5.

On page 2, line 6, delete "or the United States".

On page 2, line 9, delete "under this chapter".

On page 2, line 12, delete "under this".

On page 2, line 13, delete "chapter".

On page 2, delete lines 18 to 20, inclusive.

On page 3, line 2, delete "~~shall~~ may" and insert "shall".

On page 3, line 7, delete everything after "." .

On page 3, delete line 8.

On page 3, line 9, delete everything before "The".

On page 3, line 10, after "counsel" insert ", whether retained or appointed,".

On page 3, after line 16, insert:

"Before a second or subsequent application for a writ of habeas corpus may be filed, the applicant shall move in the circuit court of appropriate jurisdiction for an order authorizing the applicant to file the application.

1 The assigned judge shall enter an order denying leave to file a second or successive
2 application for a writ of habeas corpus unless:

3 (1) The applicant identifies newly discovered evidence that, if proven and viewed in
4 light of the evidence as a whole, would be sufficient to establish by clear and
5 convincing evidence that no reasonable fact finder would have found the applicant
6 guilty of the underlying offense; or

7 (2) The application raises a new rule of constitutional law, made retroactive to cases on
8 collateral review by the United States Supreme Court, that was previously
9 unavailable. The grant or denial of an authorization by the circuit court to file a
10 second or subsequent application shall not be appealable.

11 Section 6. That § 21-27-16.1 be repealed.

12 ~~—21-27-16.1. All grounds for relief available to a petitioner under this chapter shall be raised~~
13 ~~in his original, supplemental or amended application. Any ground not raised, finally adjudicated~~
14 ~~or knowingly and understandingly waived in the proceedings resulting in his conviction or~~
15 ~~sentence or in any other proceeding that the applicant has taken to secure relief from his~~
16 ~~conviction, or sentence, may not be the basis for a subsequent application, unless the court finds~~
17 ~~grounds for relief asserted which for reasonable cause were omitted or inadequately raised in~~
18 ~~the original, supplemental, or amended application."~~

19 And that as so amended said bill do pass.

20 Also MR. PRESIDENT:

21 The Committee on Judiciary respectfully reports that it has had under consideration the
22 nomination of Dennis Kaemingk of Davison County, Mitchell, South Dakota, to the position
23 of Secretary of the Department of Corrections and returns the same with the recommendation
24 that the Senate advise and consent to the confirmation of said appointment.

25 Respectfully submitted,
26 Craig Tieszen, Chair

27 Also MR. PRESIDENT:

28 The Committee on Education respectfully reports that it has had under consideration SB 8
29 and returns the same with the recommendation that said bill do pass.

30 Also MR. PRESIDENT:

31 The Committee on Education respectfully reports that it has had under consideration SB 5
32 and returns the same with the recommendation that said bill be amended as follows:

1 5ca

2 On page 2, line 6, of the printed bill, delete "to distribute outside the agency" and insert
3 "for general distribution to the public".

4 And that as so amended said bill do pass and be placed on the consent calendar.

5 Also MR. PRESIDENT:

6 The Committee on Education respectfully reports that it has had under consideration the
7 nomination of Melody Schopp of Perkins County, Meadow, South Dakota, to the position of
8 Secretary of the Department of Education and returns the same with the recommendation that
9 the Senate advise and consent to the confirmation of said appointment.

10 Respectfully submitted,
11 J. Mark Johnston, Chair

12 Also MR. PRESIDENT:

13 The Committee on Commerce and Energy respectfully reports that it has had under
14 consideration SB 34 and 50 and returns the same with the recommendation that said bills do
15 pass.

16 Also MR. PRESIDENT:

17 The Committee on Commerce and Energy respectfully reports that it has had under
18 consideration SB 51 and returns the same with the recommendation that said bill do pass and
19 be placed on the consent calendar.

20 Also MR. PRESIDENT:

21 The Committee on Commerce and Energy respectfully reports that it has had under
22 consideration SB 32 and returns the same with the recommendation that said bill be amended
23 as follows:

24 32ja

25 On page 10, line 14, of the printed bill, after "discovered" insert "or the violation was not
26 part of a pattern or practice".

27 And that as so amended said bill do pass.

1 Also MR. PRESIDENT:

2 The Committee on Commerce and Energy respectfully reports that it has had under
3 consideration SB 33 and returns the same with the recommendation that said bill be amended
4 as follows:

5 33jta

6 On page 1, line 1, of the printed bill, delete "continued" and insert "examinations".

7 On page 1, line 2, delete "education".

8 And that as so amended said bill do pass and be placed on the consent calendar.

9 Respectfully submitted,
10 Tom Nelson, Chair

11 **CONSIDERATION OF REPORT OF JOINT-SELECT COMMITTEE**

12 Sen. Gray moved that the report of the Joint-Select Committee relative to the Joint Rules
13 as found on page 69 of the Senate Journal be adopted.

14 The question being on Sen. Gray's motion that the report of the Joint-Select Committee
15 relative to the Joint Rules as found on page 69 of the Senate Journal be adopted.

16 And the roll being called:

17 Yeas 31, Nays 0, Excused 4, Absent 0

18 Yeas:

19 Adelstein; Begalka; Bradford; Brown; Buhl; Frerichs; Frysliie; Gray; Haverly; Heineman;
20 Holien; Hundstad; Hunhoff (Jean); Johnston; Juhnke; Kraus; Krebs; Lederman; Nelson (Tom);
21 Novstrup (Al); Nygaard; Olson (Russell); Peters; Putnam; Rampelberg; Rhoden; Schlekeway;
22 Sutton; Tidemann; Tieszen; Vehle

23 Excused:

24 Cutler; Hansen (Tom); Maher; Rave

25 So the motion having received an affirmative vote of a majority of the members-elect, the
26 President declared the motion carried and the report was adopted.

1 Yeas:

2 Adelstein; Begalka; Bradford; Brown; Buhl; Frerichs; Fryslic; Gray; Hansen (Tom); Haverly;
3 Heineman; Holien; Hundstad; Hunhoff (Jean); Johnston; Juhnke; Kraus; Lederman; Novstrup
4 (Al); Nygaard; Peters; Putnam; Rampelberg; Rhoden; Schlekeway; Sutton; Tidemann; Tieszen;
5 Vehle

6 Nays:

7 Krebs, Maher; Nelson (Tom); Olson (Russell)

8 Excused:

9 Cutler; Rave

10 So the motion having received an affirmative vote of a two-thirds majority of the
11 members-elect, the President declared the motion carried.

12 **FIRST READING OF SENATE BILLS AND JOINT RESOLUTIONS**

13 SB 59 Introduced by: Senators Frerichs and Sutton and Representatives Feinstein, Blake,
14 Gibson, and Lucas

15 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the public
16 records open to inspection and copying.

17 Was read the first time and referred to the Committee on State Affairs.

18 SB 60 Introduced by: Senators Begalka, Bradford, Frerichs, Gray, Lederman, Olson
19 (Russell), and Schlekeway and Representatives Magstadt, Dennert, Greenfield, Haggard, Hansen
20 (Jon), Hickey, Hoffman, Hubbel, Jensen, Nelson (Stace), Olson (Betty), Russell, Stricherz,
21 Tornow, and Wick

22 FOR AN ACT ENTITLED, An Act to provide for the award of joint physical custody of
23 children under certain circumstances.

24 Was read the first time and referred to the Committee on Judiciary.

25 SB 61 Introduced by: Senators Begalka, Bradford, Frerichs, Hansen (Tom), Hundstad,
26 Lederman, Maher, Novstrup (Al), Olson (Russell), Rave, Rhoden, and Sutton and
27 Representatives Greenfield, Brunner, Deelstra, Dennert, Feickert, Gosch, Hawley, Hoffman,
28 Hubbel, Jensen, Kloucek, Lucas, Magstadt, Nelson (Stace), Olson (Betty), Rausch, Russell,
29 Sigdestad, Street, Stricherz, Tornow, Tulson, and Verchio

30 FOR AN ACT ENTITLED, An Act to exempt the production of certain plants and sod
31 from sales and use taxes.

1 Was read the first time and referred to the Committee on Taxation.

2 SB 62 Introduced by: Senators Gray, Lederman, Maher, Nelson (Tom), Nygaard, and Rave
3 and Representatives Solum, Greenfield, Hawley, and Rozum

4 FOR AN ACT ENTITLED, An Act to allow certain alcoholic beverage licensees to charge
5 a corkage fee for serving wine supplied by customers.

6 Was read the first time and referred to the Committee on Commerce and Energy.

7 SB 63 Introduced by: Senator Lederman and Representative Elliott

8 FOR AN ACT ENTITLED, An Act to revise the term of service of regional railroad
9 authority commissioners.

10 Was read the first time and referred to the Committee on Transportation.

11 SB 64 Introduced by: Senators Fryslie, Cutler, Gray, and Nelson (Tom) and
12 Representatives Street, Novstrup (David), Solum, and Verchio

13 FOR AN ACT ENTITLED, An Act to revise provisions regulating the perfection of
14 security interest liens filed on-line.

15 Was read the first time and referred to the Committee on Transportation.

16 **SECOND READING OF CONSENT CALENDAR ITEMS**

17 SB 2: FOR AN ACT ENTITLED, An Act to repeal and to make style and form revisions
18 to certain provisions related to the Department of Human Services.

19 Was read the second time.

20 The question being "Shall SB 2 pass?"

21 And the roll being called:

22 Yeas 33, Nays 0, Excused 2, Absent 0

23 Yeas:

24 Adelstein; Begalka; Bradford; Brown; Buhl; Frerichs; Fryslie; Gray; Hansen (Tom); Haverly;
25 Heineman; Holien; Hundstad; Hunhoff (Jean); Johnston; Juhnke; Kraus; Krebs; Lederman;
26 Maher; Nelson (Tom); Novstrup (Al); Nygaard; Olson (Russell); Peters; Putnam; Rampelberg;
27 Rhoden; Schlekeway; Sutton; Tidemann; Tieszen; Vehle

1 Excused:
2 Cutler; Rave

3 So the bill having received an affirmative vote of a majority of the members-elect, the
4 President declared the bill passed and the title was agreed to.

5 SB 7: FOR AN ACT ENTITLED, An Act to repeal certain provisions allowing for the
6 certification of technology parks and to allow public or private developers to apply for
7 certification.

8 Was read the second time.

9 The question being "Shall SB 7 pass?"

10 And the roll being called:

11 Yeas 33, Nays 0, Excused 2, Absent 0

12 Yeas:
13 Adelstein; Begalka; Bradford; Brown; Buhl; Frerichs; Fryslie; Gray; Hansen (Tom); Haverly;
14 Heineman; Holien; Hundstad; Hunhoff (Jean); Johnston; Juhnke; Kraus; Krebs; Lederman;
15 Maher; Nelson (Tom); Novstrup (Al); Nygaard; Olson (Russell); Peters; Putnam; Rampelberg;
16 Rhoden; Schlekeway; Sutton; Tidemann; Tieszen; Vehle

17 Excused:
18 Cutler; Rave

19 So the bill having received an affirmative vote of a majority of the members-elect, the
20 President declared the bill passed and the title was agreed to.

21 SB 12: FOR AN ACT ENTITLED, An Act to codify the legislation enacted in 2011.

22 Was read the second time.

23 The question being "Shall SB 12 pass?"

24 And the roll being called:

25 Yeas 33, Nays 0, Excused 2, Absent 0

26 Yeas:
27 Adelstein; Begalka; Bradford; Brown; Buhl; Frerichs; Fryslie; Gray; Hansen (Tom); Haverly;
28 Heineman; Holien; Hundstad; Hunhoff (Jean); Johnston; Juhnke; Kraus; Krebs; Lederman;
29 Maher; Nelson (Tom); Novstrup (Al); Nygaard; Olson (Russell); Peters; Putnam; Rampelberg;
30 Rhoden; Schlekeway; Sutton; Tidemann; Tieszen; Vehle

1 Excused:
2 Cutler; Rave

3 So the bill having received an affirmative vote of a majority of the members-elect, the
4 President declared the bill passed and the title was agreed to.

5 SB 26: FOR AN ACT ENTITLED, An Act to revise certain requirements pertaining to
6 earnest money paid in a cooperative or cobrokerage real estate transaction.

7 Was read the second time.

8 The question being "Shall SB 26 pass?"

9 And the roll being called:

10 Yeas 33, Nays 0, Excused 2, Absent 0

11 Yeas:
12 Adelstein; Begalka; Bradford; Brown; Buhl; Frerichs; Fryslie; Gray; Hansen (Tom); Haverly;
13 Heineman; Holien; Hundstad; Hunhoff (Jean); Johnston; Juhnke; Kraus; Krebs; Lederman;
14 Maher; Nelson (Tom); Novstrup (Al); Nygaard; Olson (Russell); Peters; Putnam; Rampelberg;
15 Rhoden; Schlekeway; Sutton; Tidemann; Tieszen; Vehle

16 Excused:
17 Cutler; Rave

18 So the bill having received an affirmative vote of a majority of the members-elect, the
19 President declared the bill passed and the title was agreed to.

20 SB 28: FOR AN ACT ENTITLED, An Act to revise provisions regarding the renewal
21 process for certain third party insurance administrators.

22 Was read the second time.

23 The question being "Shall SB 28 pass?"

24 And the roll being called:

25 Yeas 33, Nays 0, Excused 2, Absent 0

26 Yeas:
27 Adelstein; Begalka; Bradford; Brown; Buhl; Frerichs; Fryslie; Gray; Hansen (Tom); Haverly;
28 Heineman; Holien; Hundstad; Hunhoff (Jean); Johnston; Juhnke; Kraus; Krebs; Lederman;
29 Maher; Nelson (Tom); Novstrup (Al); Nygaard; Olson (Russell); Peters; Putnam; Rampelberg;
30 Rhoden; Schlekeway; Sutton; Tidemann; Tieszen; Vehle

1 Excused:
2 Cutler; Rave

3 So the bill having received an affirmative vote of a majority of the members-elect, the
4 President declared the bill passed and the title was agreed to.

5 **SECOND READING OF SENATE BILLS AND JOINT RESOLUTIONS**

6 Sen. Olson moved that SB 11 be deferred to Monday, January 23, the 7th legislative day.

7 Which motion prevailed.

8 Sen. Olson moved that SB 13 be deferred to Friday, January 20, the 6th legislative day.

9 Which motion prevailed.

10 SB 53: FOR AN ACT ENTITLED, An Act to permit the Department of Public Safety to
11 require certain accident reports to be filed by electronic means.

12 Was read the second time.

13 The question being "Shall SB 53 pass?"

14 And the roll being called:

15 Yeas 32, Nays 1, Excused 2, Absent 0

16 Yeas:
17 Adelstein; Bradford; Brown; Buhl; Frerichs; Fryslie; Gray; Hansen (Tom); Haverly; Heineman;
18 Holien; Hundstad; Hunhoff (Jean); Johnston; Juhnke; Kraus; Krebs; Lederman; Maher; Nelson
19 (Tom); Novstrup (Al); Nygaard; Olson (Russell); Peters; Putnam; Rampelberg; Rhoden;
20 Schlekeway; Sutton; Tidemann; Tieszen; Vehle

21 Nays:
22 Begalka

23 Excused:
24 Cutler; Rave

25 So the bill having received an affirmative vote of a majority of the members-elect, the
26 President declared the bill passed and the title was agreed to.

SB 54: FOR AN ACT ENTITLED, An Act to revise the circumstances under which motor vehicle headlamps must be dimmed.

Was read the second time.

The question being "Shall SB 54 pass?"

And the roll being called:

Yeas 17, Nays 16, Excused 2, Absent 0

Yeas:

Adelstein; Begalka; Buhl; Frerichs; Fryslie; Gray; Hansen (Tom); Heineman; Hunhoff (Jean); Juhnke; Kraus; Lederman; Novstrup (Al); Nygaard; Rampelberg; Schlekeway; Tieszen

Nays:

Bradford; Brown; Haverly; Holien; Hundstad; Johnston; Krebs; Maher; Nelson (Tom); Olson (Russell); Peters; Putnam; Rhoden; Sutton; Tidemann; Vehle

Excused:

Cutler; Rave

So the bill not having received an affirmative vote of a majority of the members-elect, the President declared the bill lost.

Sen. Gray announced his intention to reconsider the vote by which SB 54 was lost.

SB 27: FOR AN ACT ENTITLED, An Act to revise disciplinary action remedies of the Cosmetology Commission.

Was read the second time.

The question being "Shall SB 27 pass?"

And the roll being called:

Yeas 30, Nays 3, Excused 2, Absent 0

Yeas:

Adelstein; Begalka; Bradford; Brown; Buhl; Frerichs; Fryslie; Gray; Hansen (Tom); Haverly; Heineman; Holien; Hunhoff (Jean); Johnston; Juhnke; Kraus; Krebs; Lederman; Maher; Nelson (Tom); Novstrup (Al); Nygaard; Olson (Russell); Peters; Putnam; Rampelberg; Schlekeway; Sutton; Tieszen; Vehle

Nays:

Hundstad; Rhoden; Tidemann

1 Excused:
2 Cutler; Rave

3 So the bill having received an affirmative vote of a two-thirds majority of the members-
4 elect, the President declared the bill passed and the title was agreed to.

5 SB 18: FOR AN ACT ENTITLED, An Act to revise certain provisions regarding
6 references to the Internal Revenue Code.

7 Was read the second time.

8 The question being "Shall SB 18 pass?"

9 And the roll being called:

10 Yeas 32, Nays 1, Excused 2, Absent 0

11 Yeas:

12 Adelstein; Begalka; Bradford; Brown; Buhl; Frerichs; Fryslie; Gray; Hansen (Tom); Haverly;

13 Heineman; Holien; Hundstad; Hunhoff (Jean); Johnston; Juhnke; Kraus; Krebs; Lederman;

14 Maher; Nelson (Tom); Novstrup (Al); Olson (Russell); Peters; Putnam; Rampelberg; Rhoden;

15 Schlekeway; Sutton; Tidemann; Tieszen; Vehle

16 Nays:
17 Nygaard

18 Excused:
19 Cutler; Rave

20 So the bill having received an affirmative vote of a majority of the members-elect, the
21 President declared the bill passed and the title was agreed to.

22 **MESSAGE FROM THE HOUSE**

23 MR. PRESIDENT:

24 I have the honor to inform your honorable body that the House has adopted the report of
25 the Joint-Select Committee relative to the Joint Rules for the two houses for the Eighty-seventh
26 Legislative Session.

27 Respectfully,
28 Karen Gerdes, Chief Clerk

1 There being no objection, the Senate reverted to Order of Business No. 9.

2 CONSIDERATION OF REPORT OF COMMITTEE

3 Sen. Olson moved that the report of the Standing Committee on

4 Health and Human Services on SB 21 as found on page 67 of the Senate Journal be
5 adopted.

7 Which motion prevailed.

8 Sen. Brown moved that the Senate do now adjourn, which motion prevailed and at
9 3:00 p.m. the Senate adjourned.

10 Fee Jacobsen, Secretary

11 **JOINT SESSION**

Pursuant to the report of the Joint-Select Committee, as found on page 40 of the Senate Journal, the Senate and the House of Representatives met in informal joint session in the House Chamber for the purpose of having a memorial service for deceased former members and reading of the following Joint Memorial Resolution:

16 WHEREAS, the Great Ruler of the Universe has ordered a final adjournment in the lives
17 of six former members of the South Dakota Legislature, namely: the *Honorable Thomas J.*
18 *Bergan*; the *Honorable Benny J. Gross*; the *Honorable Cortland Johnson*; the *Honorable Dale*
19 *E. Kringen*; the *Honorable Keith W. Paisley*; and the *Honorable Gordon R. Pederson*; and

20 WHEREAS, in the lives of all these eminent public servants there was noted a profound
21 urgency in an unselfish manner, with trials and vicissitudes often far outweighing honors, but
22 with a consciousness that here in a land of freedom the dignity of the individual is supreme, that
23 justice must be dispensed, and that only by eternal vigilance and unrelenting effort can self-
24 government of a people be preserved; and

26 WHEREAS, it is fitting that we humbly honor the memory of those who have thus
27 contributed to the orderly process of government under the Constitution:

28 NOW, THEREFORE, BE IT RESOLVED, by the Senate and the House of Representatives
29 of the Eighty-seventh Session of the Legislature of the State of South Dakota duly convened
30 in recess session in recognition of the useful lives and unfailing devotion to the interests of the
31 State of South Dakota, as well as the rectitude of thought and action and fidelity to the highest
32 principles of American citizenship by these honorable people, that the Senate and the House of
33 Representatives do now pause in their labors out of respect for the memory of their late fellow

1 associates in the functions of government, and note that in their passing, the state they have
2 served so well has suffered a distinct loss, and though their labors have ceased and they have
3 been laid to rest, the people of this great state have benefited greatly from the services rendered
4 by them and they have left upon the sands of time an inspiring record of devotion to their fellow
5 citizens under the guiding hand of Almighty God; and

6 BE IT FURTHER RESOLVED, that this Resolution be printed in the journals of the
7 Senate and the House of Representatives of the Eighty-seventh Session of the Legislature of the
8 State of South Dakota, now assembled this 19th day of January, 2012, at Pierre, South Dakota.